73. UNION OR EMPLOYEE UNFAIR PRACTICES

"Unfair labor practices are those matters enumerated in **39-31-401** and **402 MCA**. [See] **Ford v. University of Montana 598 P.2d 604 (1979)." ULP #19-80**

"Pursuant to Section **39-31-402 MCA**, it is an Unfair Labor Practice for a labor organization or its agents to: (1) restrain or coerce employees in the exercise of the rights guaranteed in **39-31-201** or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances; (2) refuse to bargain collectively in good faith with the public employer if it has been designated as the exclusive representative of employees; (3) use agency shop fees for contributions to political candidates or parties at state or local levels." **ULPs #62-89 and #64-89**.

73.1: Interference with or Restraint of Employees' Rights

"[I]t is an unfair labor practice for a union to coerce an employer to dishonor valid notices of revocation of deduction authorizations when the effect is to 'restrain' public employees … in the 'exercise of the right of self-organization, to form, join, or assist any labor organization." … MEA significantly involved itself in the affairs of the District in encouraging the District to continue to deduct the dues." **ULP #2-79**

See also **ULP #44-79.**

"National Labor Relations Board precedent holds that a labor organization restrains or coerces employees in the exercise of their Section 39-31-201 rights when it fines a member for supporting a decertification effort. However, it is also well established that a labor organization may expel a member for bringing a petition for its decertification. See ***Tawas Tube Products, Inc.*, 58 LRRM 1330,151 NLRB 9, February 15, 1965**; ***National Labor Relations Board v. Molders Local 125*, 777 LRRM 2067, 442 F.2d 92 1971 CA 7**; and ***Steelworkers Local 4028*, 60 LRRM 1008, 1514 NLRB 692, August 25, 1965** affirmed in ***Price v. National Labor Relations Board*, 64 LRRM 2495, 373 F.2d 443, 1967 CA 9, cert. denied, 68 LRRM 2408, 392 US 904, June 10, 1968**.... It was an Unfair Labor Practice for the defendants to seek to discipline the complainants with a fine for supporting the decertification effort. However, that matter was rendered moot when the American Federation of State, County and Municipal Employees internal procedures denied the defendants' request for a fine. ***Steelworkers Local 4028*, 60 LRRM 1008, 14 NLRB 692, August 25, 1965** affirmed in ***Price v. National Labor Relations Board,* 64 LRRM 2495, 373 F.2d 443, 1967 Ca 9, cert. denied, 68 LRRM 248, 392 US 904, June 10, 1968**. See also ***Wiglesworth v. Teamsters*, 93 LRRM 2801, 552 F.2d 1027, 1976 CA 4 cert denied, 95 LRRM 2575, 41 US 955, June 6, 1977**.

It was not an Unfair Labor Practice for the defendants to seek the complainants' expulsion." **ULPs #62-89 and #64-89**.

See also **ULP #12-88**.

73.113 Interference with or Restraint of Employees' Rights — Breach of Duty of Fair Representation [See also 23.]

"In short, the Court has to find that the Union's action was in some way a product of bad faith, discrimination, or arbitrariness. The mere fact that Bonnie Ford disagrees with the decision of the Union [in determining that her grievance was without merit] is not sufficient basis for a find of breach of the duty of fair representation absent these factors." **Ford v. University of Montana (1979)**

"We agree with the Board of Personnel Appeals in this matter. We still recognize the holding in Ford that a District Court has original jurisdiction to hear claims that a union has breached its duty of fair representation. We no longer recognize, however, the dicta in Ford which states that a breach of the duty of fair representation is not an unfair labor practice within the meaning of section **39-31-402, MCA**. Further, we no longer recognize other dicta in Ford which states that finding jurisdiction in the Board of Personnel Appeals on these matters would necessarily deprive the District Court of jurisdiction. We see no reason why jurisdiction in the District Court should deprive a grievant of his or her administrative remedies under the Act. Vaca itself stood for the proposition of concurrent jurisdiction in both the NLRB and the federal courts." **ULP #24-77 Montana Supreme Court (1981)**

"Thus it is settled under federal labor law and therefore under Montana labor law that a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner…. Contrary to petitioner's assertion, the hearing examiner did not find mere negligence in the Union's handling of the grievance…. [T]he hearing examiner emphasized 'this inaction combined with [the business agent's] subsequent statements to McCarvel indicate an active, intentional avoidance of accepting the grievance'." **ULP #24-77 District Court (1985)**

"The Union also contends the Board erred by making no finding related to discrimination, as is required for a conclusion that there has been a breach of the duty of fair representation. No such finding is necessary…. A clear majority of circuit courts applying the holdings of the Supreme Court [in Vaca] do not now require a finding of discrimination, bad faith or hostility on the part of the union to prove breach of the duty of fair representation. In this case, no finding as to discrimination was made because non was necessary." **ULP #24-77 District Court (1985)**

On April 11, 1984, appellant began the present action alleging that his Union breached a duty of fair representation in handling his unfair labor practice charge…. Klundt alleges that the Union requested the Board to put his charges on hold. Even if the Union does not owe Klundt a duty of fair representation in this case [because it is not required to represent member outside of collective bargaining], that does not mean the Union has the right to affirmatively interfere with appellant's unfair labor practice charges…. If discovery or evidence at trial fails to support Klundt's claim, the Union may obtain a summary judgment or a directed verdict." **ULP #38-81 Montana Supreme Court (1986)**

"Since the law does not require the University Teachers Union to allow non-union members to vote on contract ratification, the above allegations do not allege either (a) a breach of the duty of fair representation or (b) a violation of 39-31-206." **ULP #16-83**

"[I]t is settled under federal labor law and therefore under Montana labor law that a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner. . . . We can think of few issues more meritorious and important to an employee than the issue of pay. The District Court's conclusion that the Union's conduct was so unreasonable and arbitrary as to constitute a breach of the duty of fair representation is firmly supported by the law and the facts." **ULP #24-77 Montana Supreme Court (1986).**

73.1142: Interference or Restraint of Employees' Rights – Discrimination for Seeking Recourse to State Board or Courts – Filing Charge or Petition

" '[T]he Defendant is willfully engaging in a course of conduct to discriminate against employees within a bargaining unit because said employees have attempted to exercise rights guaranteed…. Moreover, although it is not specifically prohibited in Montana law as it is in the NLRA, employees of the bargaining unit … are being discriminated against by their union for filing a complaint before the Board of Personnel Appeals'." **ULP #34-78**

73.115: Interference with or Restraint of Employees' Rights – Illegal Campaign Practices

Section **59-1603(4) RCM** states provisions for conducting business and elections for exclusive representatives of employees. The local is admonished to correct abuses immediately although the unfair labor practice charge was dismissed since all internal remedies had not been exhausted. **ULP #18-76**

73.31: Unfair Practices of Individual Employees — Dissident Group Activity

"Robert N. Noyes and others who circulated decertification cards fall under the definition of 'labor organization' of the Montana collective bargaining statutes and are accordingly conferred the legal rights and responsibilities conferred on labor organizations under those statutes." **ULP #14-77**

"Following the defeat of the decertification effort, the defendants brought internal union disciplinary action against the complainants." **ULP #62-89**.

"In a decision dated January 9, 1990, Jeane Lambie, American Federation of State, County and Municipal Employees Judicial Panel Member found the Complainant guilty of violating American Federation of State, County and Municipal Employees International Constitution and expelled him from membership." **ULP #64-89**.

See also **ULP #62-89**.

73.4: Refusal to Bargain in Good Faith [See also 41.63.]

See **ULP #18-81.**

73.41: Refusal to Bargain in Good Faith – Bargaining Demand

"[I]t does not become an unfair labor practice for the Association to present a specific economic proposal which may be equal to or greater than what the School Board budgeted." **ULP #25-76**

See also **ULP #11-79.**

73.433: Refusal to Bargain in Good Faith – Indicia of Good/Bad Faith and Surface Bargaining – Imposing Conditions

One of the Employer's counter charges was that the "Union was guilty of bad faith in insisting that ratification of the entire contract for the two years in the next biennium be accomplished as a condition of settling the strike." The Hearing Examiner concluded "that the Union's position is totally justified…" and dismissed the complaint. **ULP #11-79**

"The union admitted it refused to bargain on those subjects, but it asserted that its refusal was justified because: (1) the Sheriff was not the designated representative of the Employer; and (2) the subjects were untimely raised based on the parties' past practices in reopening the contract." **ULP #45-81**

73.440: Refusal to Bargain in Good Faith – Indicia of Good/Bad Faith and Surface Bargaining – Totality of Conduct

See **ULPs #11-79** and **#45-81**.

73.441: Refusal to Bargain in Good Faith – Indicia of Good/Bad Faith and Surface Bargaining – Withdrawal of Proposals

See **ULP #11-79.**

73.45: Refusal to Bargain in Good Faith – Insistence to Impasse on Non-Mandatory Subject [See also 42.2, 42.3, 51, 53.11, 55.92, and 72.54.]

"The union insisted to impasse on bargaining on a non-mandatory subject. There was no obligation on the part of the employer to bargain further once the repeal was effective. The state could bargain or not bargain on the subject as it was fit." **ULP #47-79**

"[T]he Union's refusal to bargain with the Sheriff or to recognize his as a representative of the Employer who could properly submit proposals for bargaining would amount to a refusal to bargain in good faith…. The union was obligated to bargain on all subjects proposed by the Employer on December 23, 1981 with respect to wages, hours, fringe benefits and other conditions of employment as those terms are used in 39-31-301 MCA…. The cessation of negotiations was caused by the Union's refusal to negotiate in violation of **39-31-402(2) MCA." ULP #45-81**

73.462: Refusal to Bargain in Good Faith — Failure to Ratify — Refusal to Execute

Failure to Execute the agreement [which was orally agreed to at the bargaining table] is a failure to bargain in good faith." There are exceptions, however. "In this case as in those cited. . . , there was not a meeting of the minds. While the parties reached an 'agreement', that 'agreement' was based on the incorrect information supplied to the union by the City. The bad faith bargaining engaged in by the City led the union to make an agreement that would not have been made absent the incorrect information. There was no true meeting of the minds between the two parties and absent a meeting of minds the Act does not require MPEA to execute the 'agreement'." **ULP #19-85**.

73.479: Refusal to Bargain in Good Faith – Defenses to Refusal to Bargain Charge – Other

"It cannot be stated unequivocally that in the past the parties limited negotiations to those subjects raised in the pre-negotiations correspondence. For that reason I cannot conclude that either party was limited in the number or kind of issues they raised as negotiations began on December 23rd." **ULP #57-81**

"Negotiations were properly opened between the parties, pursuant to the collective bargaining agreement, by the Sheriff when he sent the letter dated October 21, 1981." **ULP #45-81**

73.5: Other Unfair Practices

"[B]oth sides breached the collective bargaining agreement…. [V]iolation of a contractual provision is not per se an unfair labor practice and it is to be noted that the Montana statute does not provide such a provision as does the State of Wisconsin." **ULP #11-79**

"[N]either side to a collective bargaining situation has any obligation to disclose to the other its 'bottom line' or 'hole card' in the ordinary situation at the risk of being held to be in bad faith." **ULP #11-79**

"Nothing … indicates that the Associations were involved in the decision to withhold the fees from the wages of certain employees without proper authorization, or that the Associations' involvement in this matter has been any other than that permitted by the contractual relationship with the School District." The Hearing Examiner "does not find merit in this charge." **ULP #44-79.** See also **ULP #2-79.**

The Association did not violate **39-31-401 MCA** by distributing the evaluation form and teacher Knippel did not violate **39-31-402 MCA** by calling the meeting. The Hearing Examiner noted that interference with management rights under **39-31-303 MCA** "do not constitute unfair labor practices per se." **ULP #19-80**

"No reliable, probative, or substantial evidence or argument submitted in this matters shows that it was an unfair labor practice for the defendant to file grievances." **ULP #32-86**.

"[T]he complainant failed to show with a preponderance of the evidence that the defendant filed grievances as a means to restrain or coerce the complainant in the selection of its representative for purposes of collective bargaining." **ULP #32-86**.

"No reliable, probative or substantial evidence or argument submitted in this matter shows that it was an unfair labor practice for any city employee, union officer or not, to respond to a request for information from a member of the city council." **ULP #32-86**.

"Section **39-31-402(1) MCA** makes it an unfair labor practice for a labor organization or its agents to 'restrain or coerce a public employer in the selection of its representative for the purpose of collective bargaining or the adjustment of grievances.' The provision is identical to the wording in the National Labor Relations Act that prohibits similar conduct." **ULP #20-89**.

See also **ULP #32-86**.

"Refusal to comply with an attempted dues deduction revocation outside the window period is neither coercive nor a restraint on the employees Section **39-31-201 MCA** rights to engage in, or refrain from, protected concerted activities. See ***Electrical Workers (UE) Local 123 vs. Westinghouse Electric Corporation,* 345 F Supp. 274, 80 LRRM 3151, affirmed, 478 F.2d 13 99, 83 LRRM 2409, CA 3 1973**; ***US Postal Service vs. NLRB*, CA 9 1987, 126 LRRM 2277, 827 F.2d 548**; ***US Postal Service vs. NLRB*, CA 6 1987, 126 LRRM 3137, 833 F.2d 1195**." **ULP #12-88**.

"The prohibition is against union restraint or coercion of the employer's selection of its representative.... [See] the U.S. Supreme Court...in ***Florida Power and Light Company vs. IBEW*, 417 US 790, 86 LRRM 2689 (1974)**.... There is no restraint or coercion against the employer in the selection of his representative where the employer himself is acting as the representative. ***Painters, Local 1621 (Glass Management Assn.)*, 211 NLRB No. 91, 90 LRRM 1637 (1975)**. Union picketing of an employer to pressure it into entering a collective bargaining agreement does not violate **Section 8(b)(1)(B) of the National Labor Relations Act**. ***Morand Bros. Beverages Co*., 190 F.2d 576, 28 LRRM 2364 (CA 7, 1951).**" **ULP #20-89**.

"As such picketing of a neutral third party [First National Park Bank, the place of business of School District Trustee Robert Gersack] has the potential for influencing the public's choice of trustees and for limiting the field of available trustee candidates, it is an unlawful effort to 'restrain or coerce a public employer in the selection of his representative for the purpose of collective bargaining." **ULP #20-89.**

See also **ULPs #62-89 and #64-89**.

73.53: Other Unfair Practices – Refusal to Comply with Statute or Regulation

One unfair labor practice charge was that "James Gillhouse, President of the Ronan-Pablo Unit of the MEA [Montana Education Association], refused to provide Complainant with a copy of the Constitution and by-laws of Defendant union because the Complainants had formally exercised their rights guaranteed under the Act to join and assist a rival labor organization." However, since "Complainants were supplied with copies of the documents … [after] the filing of unfair labor practice charges, there is not further remedy this Board could order with respect to this charge. This issue is therefore moot." **ULP #34-78**

"*Although* there was no obligation on the part of President Gillhouse to appoint these people [AFT-MEA members whose memberships were improperly revoked] to the committee, the fact that they could not even have been

considered for appointment excluded them from participating in union … *activities.*" **ULP #34-78**

Nothing "sustains the charge that business was conducted in secret." **ULP #34-78**

"Although there was some evidence that AFT members had difficulty in obtaining membership applications, none amounted to a preponderance showing Mr. Gillhouse intentionally withheld these cards for an unreasonable period." **ULP #34-78**

The charge that the Defendant established two separate unions within the bargaining unit (one of dues paying members and one of non-dues paying members) was denied. "Although there was a motion passed to segregate votes, the minutes show that such segregation did not actually take place." **ULP #34-78**

73.54: Other Unfair Practice – Refusal to Meet and Discuss [See also 41.6 and 72.74.]

"The Association did ignore the requests for negotiations because it had taken a position that the Alteration of Master Contract should remain in full force because of passage of 'a' mill levy. Returning to the bargaining table would have compromised their position and the Association had the right to litigate its claim. (See **Mine Workers, Local 184, 238 NLRB No. 214, 99 LRRM 1670….**) **ULP #29-80**

73.55: Other Unfair Labor Practices – Refusal to Participate in Impasse Proceedings
[See also 51.12, 53.24, 55.33, and 72.75.]

"[B]ecause Complainant did not request the formation of the Board of Review until April 15, 1981, well after the January 30th date specified … the Defendant was not obligated to participate in the Board of Review process." **ULP #18-81**